IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(BAIL) NO.409 OF 2006

Shri Pratham Gadhagkar
s/o Vasant Gadhagkar
r/o Meerafloor, Apts
St. Inez, Panaji-Goa
Presently in Judicial Custody
At Margao-Goa. ... Applicant

versus

State
(Through P.I. attached to
Vasco Police Station)
Vasco-Goa. ... Respondent

Mr. Menino Teles, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

CORAM : N. A. BRITTO, J.

DATE : 10TH JANUARY, 2007.

ORAL ORDER

Heard Mr. Menino Teles, the learned Counsel on behalf of the applicant and Ms. Winnie Coutinho, the learned Public Prosecutor on behalf of the respondent.

2. There is no dispute that the original accused no.5 in Sessions Case No.15/2005 was made as an approver in the said case in terms of Section 307 of the Code of Criminal Procedure, 1973. There is also no dispute that since then the said approver who is the applicant herein, was examined as a witness of the prosecution and then was recalled for further cross-examination which has also been completed. He filed an application for bail before the learned Additional Sessions Judge which came to be rejected by Order dated 17-11-2006 on the ground that in terms of Section 306(4)(b) of the said Code the applicant/approver would not be entitled to bail until the termination of the trial.

3. As already stated, the applicant was tendered pardon in terms of Section 307 of the Code by the learned Sessions Judge and it is the contention of Mr. Teles, the learned Counsel on behalf of the applicant that the prohibition under Section 306 (4)(b) that the applicant has to be detained in custody until the termination of the trial would be inapplicable to his case. The learned Counsel Mr. Teles has further submitted that even otherwise this Court is competent enough in terms of Section 382 of the Code to order the release of the applicant on bail as

his further detention is most unnecessary. Mr. Teles in support of the first proposition has placed reliance on the case of **R.T.O, Kolar** v. **S. R. V. Pathi**(1981 Cri.L.J. NOC 171) and in support of the other proposition, the learned Counsel has relied on two Full Bench decisions of the Delhi High Court in the case of **Prem Chand** v. **State**(1985(1) Crimes 99) and **Noor Taki alias Mammu** v. **State of Rajasthan**(1986 Cri.L.J. 1488).

4. On the other hand, it has been submitted by the learned Public Prosecutor that the applicant could be released within a month or so when the trial in the Sessions Case would come to an end. The learned Public Prosecutor has further submitted that the applicant is a resident of St. Inez and therefore it would be inadvisable to release him on bail at this stage. Reliance has been placed by the learned Public Prosecutor on a Single Judge decision of the Rajasthan High Court in the case of **Ayodhya Singh** v. **State**(1973 Cri.L.J.768) wherein referring to Section 337(3) of the old Code the learned Single Judge held that the general powers of granting bail had been taken away by sub-section(3) of Section 337 of the said Code (old). The learned Single Judge also held that the word "shall"

which is preceded by the word "unless" clearly suggested that the Legislature had prohibited the Court from passing contrary orders and further held that the approver had to be kept in custody until the termination of the trial.

5. The object under Section 306(4)(b) of the Code, in case the approver is not on bail, to detain him in custody till the conclusion of the trial, is not to punish him for having agreed to give evidence for the State, but to protect him from the wrath of the confederates he has chosen to expose and the other object in detaining him is to prevent him from the temptation of saving his erstwhile friends and companions. Since the other accused are in custody, even if the applicant is released on bail, the said object cannot be defeated.

6. Be that as it may, in the case of **R.T.O., Kolar** v. **S. R. V. Pathi**(supra) a learned Single Judge of Karnataka High Court held that the prohibition contained in Section 306(4)(b) of the Code applies only to Magistrates and not to the Sessions Court. It does not constitute the condition on which the pardon may be tendered to an accused person. The provision of law contained in

Section 306(4)(b) cannot be made applicable to the case of a person to whom pardon has been tendered under Section 307 of the Code by the Sessions Judge by apology(sic. analogy). As there is no such prohibition under Section 307 of the Code such an accused can be released on bail. In that case, the accused being a lady was ordered to be released on bail.

7. This Court in the case of **Shri Yogesh Dhadellu** v. **State**(Criminal Miscellaneous Application No.125 of 2003) by unreported Judgment dated 24-7-2003 after relying on the aforesaid Full Bench decisions of the Delhi and Rajasthan High Courts exercised powers under Section 482 of the Code and ordered the release of the applicant on bail by executing a bond to appear before the Court, as and when directed by the Court. As already stated, the applicant/approver in this case has been in custody for a period of two years and he has been already examined in the trial. No useful purpose would be served by continuing with his detention, even if the trial is likely to be completed in a month or two. The object to be achieved even by a provision like Section 306(4)(b) would not be defeated in case the applicant is ordered to be released on bail apart from the

fact that the said provision would also be inapplicable to the facts of the case considering that the applicant was made an approver in terms of Section 307 of the Code. I have no reason to differ with the view held in **R.T.O, Kolar** v. **S. R. V. Pathi** (supra).

8. Considering the facts and circumstances of this case the applicant herein is ordered to be released on bail upon execution of a bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the learned Additional Sessions Judge, Margao with a condition that he will attend the trial Court as and when required by the learned trial Judge.

Application disposed of on the above terms.

N. A. BRITTO, J.

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